

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the above amendments and following remarks.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-16 and 18-21 are currently pending. Claim 1 is hereby amended. Claims 15-16 and 19-21 are withdrawn from consideration.

II. THE OBJECTIONS TO DRAWINGS UNDER 37 CFR 1.83(a) AND THE REJECTIONS UNDER 35 U.S.C. § 101 AND §112

The drawings were objected to under 37 CFR 1.83(a), specifically with regard to claim 15. Claim 16 was rejected under 35 U.S.C. § 101. Claims 16 and 19-20 were rejected under 35 U.S.C. § 112.

Claims 15-16 and 19-21 have been withdrawn from consideration, thereby obviating the objections to drawings under 37 CFR 1.83(a) and the rejections under 35 U.S.C. § 101 and §112.

III. THE OBJECTION TO CLAIM 1

Claim 1 was objected to as lacking antecedent basis. Claim 1 has been amended such that the recitation of “the medical tube” now reads as “a medical tube.”

Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

IV. THE REJECTIONS UNDER 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a)

Claims 1-7, 9-12, 14, and 19-20 were rejected under 35 U.S.C. §102(b) as allegedly unpatentable over U.S. Patent No. 1,389,436 to Cameron (“Cameron”). Claims 8, 13, 16, 18, and 21 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cameron in view of U.S. Patent No. 5,626,128 to Bradley et al. (“Bradley”). Claim 15 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cameron in view of U.S. Patent No. 6,702,739 to Levisman (“Levisman”) and further in view of U.S. Patent No. 6,755,191 to Bertoche (“Bertoche”).

As recited in independent claim 1, the instant invention is directed to *inter alia*:

“A medical tube guiding device, said device including ...

a medical tube guide means supportable on one or both of the patient engaging portions and locatable relative to the patient engaging portions to guide a medical tube through the working gap into a mouth of the patient.”
(Emphasis added).

The relied upon portions of Cameron, Bradley, Levisman, and Bertoche, taken alone or in combination, do not teach or disclose the above identified feature of claim 1.

Cameron, as cited by the Examiner, discloses a coil spring (6). However, coil spring (6) cannot be used as a medical tube guide means supportable on one or both of the patient engaging portions and locatable relative to the patient engaging portions to guide a medical tube through the working gap into a mouth of the patient. Medical tubes such as endotracheal tubes supply essential fluids or gasses to the body or remove potentially dangerous secretions from the body of a patient and are usually deformable. If, for example, an endotracheal tube was passed through the dilated coil (6) of Cameron and the arms (5) were allowed to revert to their original position causing the diameter of

the coil (6) to be reduced, this would deform the endotracheal tube, or other medical tube, and obstruct the flow of the tube's contents which could have potentially life-threatening consequences to the patient. As Cameron would be wholly unsuitable for guiding a medical tube through the working gap into a mouth of the patient, Cameron in fact teaches away from the above identified feature of claim 1.

Moreover, page 1, column 2, lines 61 to 66 of Cameron disclose arms which, while diverging, are also bowed so that when the retractor is positioned in the mouth of the patient the arms and the spring coil will lie substantially flat or flush against the cheek of the patient. Thus, Cameron teaches away from the above identified feature of claim 1 in that if a doctor or nurse attempted to pass a medical tube through the coil, it would be deformed against the cheek wall of the patient and kink, causing the contents of the medical tube to be obstructed from freely flowing which would be hazardous to the patient.

Bradley, as cited by the Examiner, teaches a different means of attaching the device to the mouth of a patient, mainly by the use of adhesive, as described in column 3, lines 49 to 51. In the highly unlikely event that a skilled person would not be deterred from combining Cameron with Bradley due to the associated hazardous aspects, the references would fail to teach or suggest a medical tube guide means supportable on one or both of the patient engaging portions and locatable relative to the patient engaging portions to guide a medical tube through the working gap into a mouth of the patient. Applicant submits that the significance of such a feature of the present invention resides in that the problems associated with medical tubes and adhesive strips, as referenced in the application, can be avoided.

Further, Levisman and Bertoche, taken alone or in combination, fail to cure the deficiencies of Cameron and Bradley.

For at least the foregoing reasons, Applicant submits that independent claim 1 is patentable over the relied upon portions of Cameron, Bradley, Levisman, and Bertoch. For reasons similar to those described above, claim 18 is also believed to be patentable.

III. DEPENDENT CLAIMS

The other claims are dependent from independent claim 1, discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are patentable over the prior art, and an early and favorable consideration thereof is solicited.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to
Deposit Account No. 50-0320.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:



Ronald R. Santucci
Reg. No. 28,988
(212) 588-0800